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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* KARL-FRIEDRICH LAIBLE
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11 Appeal 2008-0007
12 Application 10/725,090
13 Technology Center 3600
14

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16 Decided: March 18, 2008
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19 *Before* WILLIAM F. PATE, III, MURRIEL E. CRAWFORD and
20 JENNIFER D. BAHR, *Administrative Patent Judges*.

21
22 PATE, III, *Administrative Patent Judge*.
23

24 DECISION ON APPEAL

25
26 STATEMENT OF CASE

27 The Appellant appeals under 35 U.S.C. § 134 (2002) from a Final
28 Rejection of claims 1-14. We have jurisdiction under 35 U.S.C. § 6(b)
29 (2002).

30 The Appellant claims a refrigerator housing including a joining
31 element and an end bar that are configured so that when the end bar is

introduced into the joining element, a force is exerted to widen an angle between a border strip and a side wall of the housing.

Independent claim 1 reads as follows:

1. A housing for a refrigerator, comprising:
a body defining an interior and having:
at least one side part formed from a panel of flat material;
side walls; and
a front side with an opening open to said interior;
vertical border strips and horizontal end bars surrounding said opening, at least one of said border strips together with at least one of said side walls being a constituent part of said at least one side part;
said side part having a joining element for joining said side part together with at least one of said end bars; and
said at least one end bar being introduced into said joining element and subjecting said border strip to a force having an effect of widening an angle at which said border strip is connected to said side wall.

Independent claim 14 similarly recites a refrigerator body including a joining element in which an end bar is introduced so that a border strip is subjected to a force that widens an angle between the border strip and the side wall.

The prior art relied upon by the Examiner in rejecting the claims is:

Whistler	3,984,223	Oct. 5, 1976
Bottger	4,170,391	Oct. 9, 1979

The Examiner rejected claims 1, 2, 4-7, 11 and 14 under 35 U.S.C. § 102(b) as lacking novelty over Bottger.

The Examiner also rejected claims 3, 8-10, 12, and 13 under 35 U.S.C. § 103(a) as unpatentable over Bottger in view of Whistler.

We AFFIRM-IN-PART.

ISSUES

The following issues have been raised in the present appeal.

1. Whether the Appellant has shown that the Examiner erred in rejecting claims 1, 2, 4-7, 11 and 14 as lacking novelty over Bottger.

2. Whether the Appellant has shown that the Examiner erred in rejecting claims 3, 8-10, 12 and 13 as unpatentable over Bottger in view of Whistler.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Bottger discloses a housing for a refrigerator 10 including a body defining an interior 12, 13, the body having at least one side part formed from a panel of flat material (sheet metal; not enumerated), side walls 22 and a front side (not enumerated) with an opening (not enumerated) open to the interior (Fig. 1; Col. 2, ll. 24-35 and 46-51).

2. Bottger also discloses vertical border strips 73 and horizontal end bars 16 surrounding the opening, at least one of the border strips together with at least one of the side walls being a constituent part of the at least one side part by being formed from the same panel of sheet metal (Figs. 1 and 5; Col. 2, ll. 24-35 and ll. 46-54; Col. 3, ll. 49-54).

3. Bottger further discloses that the side part has a U-shaped joining element 30 for joining the side part together with at least one of the

end bars, the end bar 28 being introduced into the joining element and received therein (Figs. 2-4; Col. 2, ll. 45-62; Col. 3, ll. 20-26).

4. Bottger specifically discloses that the width of the U-shaped joining element 30 is less than the distance between the detent tang 58 and the first end 44 of the end bar so that the end bar is frictionally held in place, thereby inherently disclosing the subjecting of the border strip to a force having an effect of widening an angle at which the border strip is connected to the side wall (Figs. 3 and 5; Col. 3, ll. 26-36).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Analysis of whether a claim is patentable over the prior art under 35 U.S.C. § 102 begins with a determination of the scope of the claim based on the claim language and upon giving claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The properly interpreted claim must then be compared with the prior art. It is also well settled that “a prior art reference may anticipate when the claim limitations not expressly found in that reference are nonetheless inherent in it.” *In re Cruciferous Sprout Litig.*, 301 F.3d 1343, 1349 (Fed. Cir. 2002).

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

1 invention was made to a person having ordinary skill in the art to which said
2 subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727,
3 1734 (2007). The Court noted that “[t]o facilitate review, this analysis
4 should be made explicit.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed.
5 Cir. 2006) (“[R]jections on obviousness grounds cannot be sustained by
6 mere conclusory statements; instead, there must be some articulated
7 reasoning with some rational underpinning to support the legal conclusion of
8 obviousness”). However, “the analysis need not seek out precise teachings
9 directed to the specific subject matter of the challenged claim, for a court
10 can take account of the inferences and creative steps that a person of
11 ordinary skill in the art would employ.” *Id.* at 1741.

12 ANALYSIS

13 Claims 1, 2, 4-7, 11 and 14

14 The Examiner rejected these claims as lacking novelty over Bottger
15 contending that Bottger discloses each and every limitation recited in these
16 claims (Ans. 4, 6 and 7). The Appellant separately argues various rejected
17 claims, and thus, we address these arguments in detail *infra*¹.

18 ¹ The Appellant also argues non-obviousness of these rejected claims in
19 view of Bottger (Br. 15-17). These arguments were not relevant in resolving
20 the issues in this anticipation rejection. However, these arguments were
considered with respect to the obviousness rejection of claims 3, 8-10, 12
and 13 discussed *infra*.

Claim 1

In regards to the Examiner's rejection of independent claim 1, the Appellant argues that Bottger does not address the problem of controlling the relationship between the border strip and the side part by using an adjoining element connected to the border strip to force a widening of the angle at which the border strip is connected to the side wall (Br. 12). The Appellant also argues that the Examiner has mischaracterized the prior art because Bottger merely discloses a detent tang that flexes until it is received in the slot of the U-shaped portion, and thus, the border strip is not subjected to a widening force (Br. 13). The Appellant further argues that when the detent tang is received in the slot, there is no deflection of the fitted components, and thus, the fact that the dimensions of the deflecting tang is slightly larger than the width of the U-shaped portion is irrelevant (Br. 13 and 14). The Appellant also notes that the U-shaped portion of Bottger is provided only at the locations where the support members connect to the cabinet's outer case and do not provide details regarding maintaining a 90° angle between the border strip and the side wall (Br. 13).

We disagree with the Appellant and find that independent claim 1 lacks novelty over Bottger which inherently discloses the limitation reciting subjecting the border strip to a force having an effect of widening an angle at which the border strip is connected to the side wall (FF 1-4; Ans. 5). Initially, we note that the Appellant's arguments regarding the problem addressed by the Appellant's invention, locations of the U-shaped portion, and maintaining of a 90° angle all fail because they are not based on limitations appearing in claim 1. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

With respect to the Appellant's argument that the detent tang does not exert a force having an effect to widen the angle at which the border strip is connected to the side wall, we find that this limitation is inherently disclosed by the refrigerator cabinet construction of Bottger. *In re Cruciferous Sprout Litig.*, 301 F.3d at 1349. Bottger clearly discloses that the U-shaped portion has a width that is less than the distance between the detent tang and outer surface of the cross piece support member so that "the cross piece support member 28 is frictionally held in place with the detent tang 58 inserted in the slot opening 42" (Col. 3, ll. 26-31). In order for the cross-piece support member (i.e., the end bar) to be frictionally retained in the U-shaped portion (i.e., the joining element), the support member must exert a force having the effect of widening the angle of the border strip (the outer leg 32) relative to the side wall (FF 4).

In addition, the Appellant's argument that there is no force to deflect the border strip once the detent tang of Bottger is received in the slot opening is not persuasive, because Bottger discloses that the end of the support member (i.e., end bar) is frictionally held in place *with the detent tang inserted in the slot opening* (Col. 3, ll. 26-31, emphasis added). Moreover, claim 1 does not require continued deflection when the components are placed in their fully assembled position, but instead, merely recites an "end bar being introduced into said joining element and subjecting said border strip to a force. . . ." Thus, this argument also fails for the reason that it is not based on limitations appearing in the claims. *In re Self*, 671 F.2d at 1348.

Therefore, we agree with the Examiner that Bottger discloses all of the limitations of independent claim 1, including subjecting the border strip

1 to a force having an effect of widening an angle at which the border strip is
2 connected to the side wall (Ans. 4). Hence, the Appellant has not shown that
3 the Examiner erred in rejecting independent claim 1 as lacking novelty over
4 Bottger.

5
6 Claim 2

7 Regarding dependent claim 2, the Appellant argues that Bottger fails
8 to disclose a joining element with a clamp clamping an end bar between at
9 least two points of contact that are spaced apart by different distances from
10 the side wall because in Bottger, the elements are held together by fasteners
11 that extend through the openings (Br. 14). We disagree.

12 Bottger clearly teaches that the U-shaped portion (i.e., the joining
13 element) clamps the cross piece support member 28 (i.e., the end bar) by
14 friction at two or more points of contact, namely, at the detent tang 58 and
15 the first end 44 of the cross piece support member (Figs. 3 and 5; Col. 3, ll.
16 26-36). These contact points are spaced apart by different distances from the
17 side wall as evidenced by the structural shape of the support member (Figs.
18 3 and 5). The fact that fasteners are also used to further secure the cross
19 piece support member does not detract from the fact that Bottger satisfies the
20 recited limitations of claim 2. Therefore, the Appellant has not shown that
21 the Examiner erred in rejecting the dependent claim 2.

22
23 Claims 4-7 and 11

24 In regards to the Examiner's rejection of claims 4-7 and 11, the
25 Appellant contends that Bottger does not disclose the recited limitations of
26 these claims (Br. 15). With respect to dependent claim 4, we disagree with

1 the Appellant's assertion because Bottger clearly shows the detent tang 58
2 providing a point of contact that is closer to the side wall than a point of
3 contact provided by the first end 44 (near numeral 61 of Fig. 3).

4 The Appellant merely asserts that Bottger does not disclose claims 5-7
5 without providing any arguments in support. However, such general
6 allegation that the art does not teach any of the claim limitations is no more
7 than merely pointing out the claim limitations which is not considered to be
8 an argument for separate patentability. 37 C.F.R. 41.37(c)(1)(vii) (2007).

9 With respect to dependent claim 11, we are persuaded by the
10 Appellant's argument (Br. 15) that the Examiner's anticipation rejection
11 should be reversed because while Bottger discloses subjecting the border
12 strip to the recited force of claim 1, the reference does not suggest rotating
13 the joining element in relation to a position thereof when not joined together
14 with an end bar. In this regard, the Specification and the figures of the
15 application clearly teach one of ordinary skill that the joining element is
16 rotated as a unit when joined together with the end bar (Figs. 4 and 8; Spec.
17 11, ll. 14-20). While rotation of the legs of the joining element is inherently
18 disclosed in Bottger, the recited rotation of the joining element is absent.

19 In view of the above, the Appellant has not shown that the Examiner
20 erred in rejecting dependent claims 4-7 as lacking novelty over Bottger.
21 However, we find that the Examiner erred in rejecting dependent claim 11 as
22 lacking novelty over Bottger.

23
24 Claim 14

25 The Appellant merely relies upon dependency from claim 1 for
26 patentability of claim 14. Therefore, for the same reasons set forth *supra*

with respect to claim 1, the Appellant has not shown that the Examiner erred in rejecting dependent claim 14 as lacking novelty over Bottger.

Claims 3, 8-10, 12 and 13

The Examiner rejected dependent claims 3, 8-10, 12 and 13 as unpatentable over Bottger in view of Whistler (Ans. 5, 7 and 8). Whistler is directed to a refrigerator construction that permits an outer condenser loop of the refrigerant tubing to include an integral condenser located in the plane of the front access opening (Col. 1, ll. 42-48). The Appellant separately argues the various rejected claims, and thus, we address these arguments in detail *infra* (Br. 18).

Claim 3

In rejecting dependent claim 3, the Examiner states that the resilient foam plastic strip 42 of Whistler which is positioned between the flanges 37 and 28' corresponds to the recited buffer body of claim 3 (Ans. 5, 7 and 8). The Examiner contends that it would have been obvious to one of ordinary skill in the art to provide the joint-on buffer body (plastic strip 42) as claimed for the purpose of increasing manufacturing tolerance of the dimensions of the elements (Ans. 5).

The Appellant argues that there is no support in Whistler for the Examiner's assertion and that the plastic strip of Whistler is incapable of serving as a point of contact as recited in claim 2 from which claim 3 depends (Br. 20).

In our review of the record, the Examiner's articulated reason for combining the cited references in the manner suggested appears to be based

1 on impermissible hindsight using the teachings of the Appellant's own
2 disclosure which states the buffer body "makes it easier to align the border
3 strip 6 in its position orthogonal to the side wall 7 with increased tolerance
4 of the dimensions of the end section 16 and of the clamp 15 and of the
5 bending strength of the clamp 15" (Spec. 13, ll. 11-22). The Examiner's
6 assertion that Whistler teaches "providing a joint-on buffer body forming at
7 a point of contact for the purpose of increase (*sic*, increasing) manufacturing
8 tolerance of the dimensions of the refrigerator elements" is not supported by
9 Whistler (Ans. 7 and 8). The Examiner has not articulated any other reasons
10 for combining these references in the manner suggested to derive the
11 claimed invention. *KSR*, 127 S.Ct. at 1740-41. Therefore, the Appellant has
12 shown that the Examiner erred in rejecting claim 3 as unpatentable in view
13 of the cited prior art.

14
15 *Claim 8-10*

16 With respect to dependent claims 8-10, the Appellant argues that the
17 recited features are not shown or suggested by Whistler, which merely
18 provides a joining element having nothing to do with the Appellant's
19 claimed invention (Br. 20). However, it is noted that Bottger discloses the
20 limitation of claim 8 in that the U-shaped portion (i.e., the joining element)
21 is connected rigidly to the border strip by virtue of these components being
22 formed from bending the same sheet metal and/or by the fasteners that are
23 received through both the border strip and one leg of the U-shaped portion
24 (Figs. 2, 4 and 5; Col. 2, ll. 46-51; Col. 3, ll. 54-59). Thus, because Bottger
25 anticipates claim 8, claim 8 is unpatentable over Bottger in view of Whistler,

1 anticipation being the epitome of obviousness. *In re McDaniel*, 293 F.3d
2 1379, 1385 (Fed. Cir. 2002).

3 Similarly, Bottger discloses that the joining element is connected
4 rigidly to the side wall as recited in dependent claim 9 because the U-shaped
5 portion (i.e., the joining element) and the side wall are made from the same
6 sheet metal (Figs. 2 and 4; Col. 2, ll. 46-51). Thus, because Bottger
7 anticipates claim 9, claim 9 is unpatentable over Bottger in view of Whistler.
8 *In re McDaniel*, 293 F.3d at 1385. We further agree that dependent claim 10
9 is unpatentable over Bottger in view of Whistler because Bottger anticipates
10 this claim as discussed relative to claim 8 and/or claim 9.

11 Therefore, the Appellant has not shown that the Examiner erred in
12 rejecting dependent claims 8-10 as obvious in view of Bottger and Whistler.

13
14 Claim 12 and 13

15 Finally, dependent claims 12 and 13 recite that the border strip is
16 covered with a colored sheet material and that the side wall is free of a color
17 coating, respectively. The Appellant contends that the Examiner has failed
18 to provide any evidence of teachings in the prior art showing that these
19 claims would have been obvious and also contend that the Examiner is
20 engaging in impermissible hindsight (Br. 20). However, we agree with the
21 Examiner that it is common knowledge and well known in the appliance art
22 to provide a colored sheet material on visible walls or components for
23 aesthetic purposes and to implement non-visible walls or components to be
24 free of color (Ans. 8). Therefore, we agree with the Examiner that these
25 claims would have been obvious to one of ordinary skill in the art, and we

1 find that the Appellant has not shown that the Examiner erred in rejecting
2 dependent claims 12 and 13 as unpatentable. *KSR*, 127 S.Ct. at 1741.

3
4 **CONCLUSIONS**

5 1. The Appellant has not shown that the Examiner erred in
6 rejecting claims 1, 2, 4-7 and 14 as lacking novelty over Bottger.

7 2. The Examiner erred in rejecting claim 11 as lacking novelty
8 over Bottger.

9 3. The Appellant has not shown that the Examiner erred in
10 rejecting claims 8-10, 12 and 13 as unpatentable over Bottger in view of
11 Whistler.

12 4. The Appellant has shown that the Examiner erred in rejecting
13 claim 3 as unpatentable over Bottger in view of Whistler.

14
15 **ORDER**

16 1. The Examiner's rejections of claims 1, 2, 4-10 and 12-14 are
17 **AFFIRMED**.

18 2. The Examiner's rejections of claims 3 and 11 are **REVERSED**.

19 No time period for taking any subsequent action in connection with
20 this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. §
21 1.136(a)(1)(iv) (2007).

22
23 **AFFIRMED-IN-PART**
24

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3 BSH HOME APPLIANCES CORPORATION
4 INTELLECTUAL PROPERTY DEPARTMENT
5 100 BOSCH BOULEVARD
6 NEW BERN, NC 28562